



CITY OF DANBURY
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ZONING COMMISSION
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MINUTES
JUNE 8, 2021

The regular meeting was called to order by Chairman Theodore Haddad Jr. at 7:39 PM.

Present were Sidney Almeida, Candace Fay, Theodore Haddad Jr., Ryan Hawley, Angela Hylenski, Rick P. Jowdy, James Kelly, Robert Melillo, and Alternates Jason Eriquez and Nelson Marchand Jr. Also present was Planning Director Sharon Calitro.

Absent were Michael Masi and Alternate Thomas Nejame.

Mr. Melillo led the Commission in the Pledge of Allegiance.

Mrs. Hylenski made a motion to accept the May 25, 2021 minutes. Mrs. Fay seconded the motion and it was passed unanimously by voice vote with nine ayes (from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, Mr. Kelly, Mr. Melillo, Mr. Eriquez, and Chairman Haddad).

PUBLIC HEARING:

Petition of D & B Wellness to Amend Sections 5.A.5.f.(2), 5.B.3.b., and 5.B.5.f.(1) of the Zoning Regulations. (Delete Prohibition on Drive-Thru Window for Medical Marijuana Dispensary.)

Chairman Haddad read the legal notice and the Planning Commission recommendation which was negative. He said although WestCOG was notified of this petition, we have not yet received a response from them. In accordance with the Statutes, this is not considered a negative recommendation. Mrs. Calitro read the staff report dated May 27, 2021.

Attorney Neil Marcus spoke in favor of this petition. He said that with him this evening was Carl Tirella, the General Manager from Acreage Holdings, who owns and manages three medical marijuana facilities in the State of Connecticut. Attorney Marcus said the Planning Commission has granted special exception/site plan approval to move the medical marijuana dispensary from its Bethel location to 105 Mill Plain Road. This building has an existing drive-thru window from its previous use as a bank. He said during the previous public hearings on this issue, the public made it clear that they think

this use should be allowed a drive-thru window. He said often retailers want a drive-thru to increase their sales and to have a competitive advantage, but this request is based solely on serving a need. He then said that the Planning Commission's negative recommendation actually violates the Americans with Disabilities Act (ADA) and also saying that the City is not going to accommodate people who need what ADA provides. He said allowing the drive-thru window is a reasonable accommodation and for the applicant to continue to provide curbside pick-up actually costs them more money because it requires additional staff in order to do that.

Chairman Haddad said regarding the public speaking about this issue; the first application regarding this matter was a June 2020 amendment to the Zoning Regulations to allow a medical marijuana dispensary as a special exception use. During the Zoning Commission public hearing, City Councilmen Paul Rotello (6th Ward) and Roberto Alves (at large) both spoke in favor of this and said especially because of COVID, it would be good if this could be dispensed via a drive-thru window. At the Planning Commission December 2020 public hearing for the special exception approval, the following City Councilmen spoke: Paul Rotello (6th Ward), Duane Perkins (5th Ward), John Esposito (4th Ward), Benjamin Chianese (6th Ward), Farley Santos (4th Ward), and Richard Molinaro (7th Ward). All of them said they were in favor of the dispensary moving to Danbury and thought it was a shame that the drive-thru window was prohibited because would be useful for people with mobility issues.

The fact that the State government is considering the legalization of recreational marijuana kept being brought up by various speakers throughout the meeting. Mr. Melillo asked Attorney Marcus if medical marijuana is available in what is known as "edibles". Attorney Marcus said yes but just because it is chewable, does not make it food. Mr. Tirella then said the business functions like a pharmacy; the patients must have a prescription from a doctor, and they must chose a dispensary that they will use. He said based on that, there is a specific list of customers who will make their purchases at this location. All purchases are pre-ordered and there is a licensed pharmacist on staff who checks every order before it is released to the customer. He continued saying explained that the curbside pickup they have been offering arose out of need during the COVID pandemic. He said it is required that two employees to go outside with the product and check the purchaser's identification and take the payment for the product. He said if the drive-thru option is not approved, they will continue to offer the curbside pick-up as long as the State continues to permit them to do it. There was mention of traffic counts and Mr. Tirella said on the busiest days, they could see 250 people. He said that inside the new building there is a waiting area for about 20-25 people and they are implementing technology to allow people to check in from their cars while they wait. He continued explaining that only the patient can pick up their product unless they have a caregiver, who also must be licensed in the exact same manner as the patient. He also said that the State regulates the number of dispensaries and growers and currently there are eighteen dispensaries and four producers in Connecticut. He added that unless the current laws that are in effect are changed, it is not very likely that there would be another dispensary approved in Danbury. Chairman Haddad then pointed out that no one can guess what the State will do. There was more discussion about what could happen if the State approves recreational marijuana. Mr. Almeida asked if the recreational use is approved, would it require approval from the City. Chairman Haddad said it would. Mrs. Calitro clarified that the proposed legislation says that if we don't regulate this, it would be considered a regular retail use. Mr. Tirella

said that the bill says local zoning approval is required so they would have to come back to this Commission to change the Regulations. Mr. Hawley asked how many patients take advantage of the curbside pick-up option. Mr. Tirella said it is available for immuno-compromised patients or those with limited mobility so in total, approximately 150-200 people. Also, it is limited to specific timeframes with appointments being scheduled about every 15 minutes. Mrs. Fay questioned the traffic pattern at the Mill Plain Road site. Mr. Tirella said that the traffic pattern including ingress and egress to the site has been addressed and approved during the special exception hearing. Mr. Melillo pointed out that it can be and has proven difficult to anticipate the impact of a decision will be in the long term.

Chairman Haddad asked if there was anyone else to speak in favor of this petition and three people raised their hands.

City Councilman (6th Ward) Paul Rotello, 13 Linden Place, spoke first. Mr. Rotello said he recalled speaking in favor at the amendment public hearing and that he had pointed out that it would be useful to be able to dispense this product via a drive-thru window. He spoke at great length saying how this is really about an extremely vulnerable population that needs medicine and how do we get it to them. He said he does not believe that approval of this would lead to some other business on Mill Plain Road saying that they should be allowed to sell donuts out of a drive-thru window since we allow medical marijuana to be dispensed that way. He reiterated that the vulnerable should not be prevented from getting their medicine because of what might happen. He said the Commission could continue this and wait to see what the State is going to do or they could show that Danbury is a caring community by allowing the compromised patients to get their medicine in an efficient way. He said he had contacted the City Traffic Engineer regarding this intersection and Mr. Mohammed provided him with copies of the improvements that will be made as a part of the Planning Commission special exception approval. He then proceeded to explain the changes in detail and said he does not feel that dispensing this medication via a drive-thru window would have a negative impact on the health, safety, and welfare of the public. He continuing speaking for quite a while regarding the Federal prohibition versus the individual States sales of medical marijuana and speculating on the repercussions that arise from the conflicting laws. In closing, he said that only the Zoning Commission has the power to control the outcome of the drive-thru issue by putting conditions on their approval, as they do with a liquor permit. He also suggested that since it appears enforcement is an issue, the State could be called upon to check out complaints in the same manner as they do with liquor problems. Lastly, he said the City will be able to address any of the ancillary issues that were mentioned tonight and they should remember this proposal is about being compassionate and taking care of the constituents which is really why they are here.

Chairman Haddad pointed out that this Commission does not have the authority to attach conditions to a proposed amendment. He continued saying that Zoning Enforcement is a huge issue in Danbury, and there is not enough staff to take care of all of the illegal signage, illegal chickens running between property lines, non-permitted uses of properties, and all of the other stuff that is going on in the City. He referred to the huge case law that was the result of lawsuits that the City won regarding the cause and effect of drive-thru window product distribution. He said Mr. Rotello said they should show compassion by making it easier for those people who need this medication, but both the Planning Commission and the Zoning Commission have demonstrated

compassion by their approval of these applications. He added in addition to the position they have taken on drive-thru windows, that there is more to consider and this is not a simple petition. In closing, he said that they have no idea what the State is going to do or what other powers will be taken away from them, but there is a lot to consider here. Mr. Melillo then reiterated that they can only put conditions on special permit approvals and they always have to consider who is going to enforce them. Mr. Rotello said he was really pointing out that since the State has a vested interest in this program, they should be called upon to help with enforcement of local laws. He added that it should not be a big deal since there are only eighteen dispensaries and they could do one each month. He also said the number of patients at the dispensary could fluctuate because like any other medication designed to keep someone who is ill comfortable, many times the outcome is that the patient does not survive. He continued speaking for a while longer but did not make any new points.

At this point, Mr. Almeida suggested that since they don't know what the State is going to do, they could continue this hearing and hopefully when they meet again, the State would have made their decision. Chairman Haddad said that is a good point, but first they need to finish letting the others in favor speak.

City Councilman (5th Ward) Duane Perkins, 22 Main Street, spoke next. He said he has sat through all of the public hearings on this matter and is concerned that people are using the term "edibles" as being comparable to food. He said there are many alternative products available at the dispensary besides the actual marijuana flower; such as ointments, oils, compounds, pills, and edible products. He referred to historic discoveries that have led to new cures and remedies and said this is how it happens. He said he understands the Commission's reluctance but this is a logical progression in seeing how useful medical marijuana can be in treating various ailments.

City Councilman (6th Ward) Benjamin Chianese, 5 Briar Ridge Road said he did not want to repeat what had already been said but there has been a lot of testimony about why this should be allowed as well as why it should not be allowed. He said the reality of this is that whether or not there is a drive-thru window, there will still be the same number of vehicles coming to and leaving the site. He said the applicant has stated that there is a specific number of people who will use this business so that is not going to change either. He said the question that no one can answer is how this will be affected if the sale of recreational marijuana is approved. He said based on that, he agrees with Mr. Almeida that they should continue this to see what the State decides. He then said based on what they have heard tonight, he thinks this should be approved.

Mrs. Fay asked Mr. Tirella how many of the eighteen dispensaries in Connecticut have a drive-thru window. Mr. Tirella said none of them have it, he did get approved to have a drive-thru scenario at the dispensary in Montville, but it was not a drive-thru like what they are proposing for this building and it was not operationally efficient so they are not longer using it.

Chairman Haddad asked if there was anyone to speak in opposition to this petition and there was no one.

Attorney Marcus then said the comments from the City Council members were all favorable and he does not have much to add. HE said he does not agree with Mr.

Almeida's suggestion that they wait for the State decision before voting on this because whenever the decision is made, it will ultimately be a locally decided issue with some towns opting out of allowing it. He said there is a financial incentive for the towns that allow it, so he is in agreement with Mr. Chianese, that this should be decided based on what they already know. He said they have presented their case based on the laws they are required to abide by. When the day comes that recreational marijuana is approved, the State will enact laws to control the distribution in the same way they did for medical marijuana. He said allowing the drive-thru use for medical marijuana is not going to have a detrimental effect on the City nor will it affect the sale of recreational marijuana. He asked that they vote on this tonight rather than continue it, because the facility is getting ready to open. Chairman Haddad asked if there is any procedure in place for the sales of medical marijuana through a drive-thru window. Mr. Tirella said there is no specific procedure but they would treat it the same as a sale that is done within the dispensary. The appropriate identification & State license would have to be provided, the State database would be checked to verify the license is active, then the patient's monthly allotment would be checked to be sure they were eligible to purchase at that time. Additionally, the drive-thru area would be isolated from the customer purchase area, so there would be no possibility of the product falling into the wrong hands.

Chairman Haddad asked if there is any sales tax charged on medical marijuana. Mr. Tirella said that is correct, the State does not make any profit on the sale of medical marijuana except for the individual licensing fees that a patient must pay. Mr. Tirella added that this is an annual license, which must be renewed each year along with a renewed prescription from the doctor. He said there is an additional fee if someone has a caregiver associated with his or her license.

Since there were no other questions for Attorney Marcus or Mr. Tirella, Chairman Haddad asked Mrs. Calitro if she had any staff comments. Mrs. Calitro said Attorney Marcus's dissection of the staff report and Planning Commission recommendation are creative albeit a bit convoluted. And if he thinks it is not staff's job to bring up concerns and potential results, he should read the ECB Realty vs. the City of Danbury decision. She said the traffic volumes on Mill Plain Road speak for themselves and there is significant documentation of them on file. And there has been no discrimination against the Americans with Disabilities Act (ADA) here.

Chairman Haddad seated Mr. Marchand to take Mr. Masi's place for this matter. He then stated that at the February 11, 2020 training session, all of the Commission members were given copies of the ECB Realty vs. the City of Danbury case law. It was discussed that night and a lot of interesting points were made this evening regarding that case. He asked for a motion to either continue or close this public hearing.

Mr. Almeida made a motion to continue the public hearing. Mr. Hawley seconded the motion. Chairman Haddad asked for discussion on the motion. Mr. Melillo asked if the motion to continue was made to wait for the State to decide the recreational marijuana bill because it will not impact their decision either way. He said he understands that this pending decision looms large over this hearing but they will have to deal with whatever the decision is as a separate matter. Mr. Hawley said he would like to hear from the public and that is why he seconded the motion. Chairman Haddad said this hearing was noticed properly and those who wished to speak in favor or in opposition

were given the chance this evening. He said if they wait for the State's decision that would not open up any further discussion on this issue. Mrs. Fay said we don't know when the decision will happen, it could happen in another session or in 2022, so that is enough of a reason to close the hearing and consider how that would impact their decision on this petition. Mr. Jowdy then pointed out that this Commission has always respected their fellow Commission members' uncertainty and concerns and for that reason, he thinks they should continue the hearing. Mr. Melillo said that he had already mentioned that if the reason to continue was to wait for the State decision, he did not think they should do that. If it was to obtain additional information, he cautioned against doing that because they need to take action based on what was presented at the public hearing. He said while he normally would respect the request of a fellow Commission member, he does not feel there is any reason to continue this hearing, so he will be voting against the motion.

Chairman Haddad took a roll call vote on the motion to continue the public hearing and the motion was denied with six nays (from Mrs. Fay, Mrs. Hylenski, Mr. Kelly, Mr. Melillo, Mr. Marchand, and Chairman Haddad) and three ayes (from Mr. Almeida, Mr. Hawley, and Mr. Jowdy).

Since the motion to continue was defeated, Mr. Melillo then made a motion to close the public hearing. Mr. Kelly seconded the motion and it was passed by roll call vote with eight ayes (from Mr. Almeida, Mrs. Fay, Mrs. Hylenski, Mr. Jowdy, Mr. Kelly, Mr. Melillo, Mr. Marchand, and Chairman Haddad) and one nay (from Mr. Hawley).

Mr. Melillo then made a motion to move this to number two under the Old Business on tonight's agenda for discussion purposes. Mr. Kelly seconded the motion and it was passed unanimously by roll call vote with nine ayes (from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, Mr. Kelly, Mr. Melillo, Mr. Marchand, and Chairman Haddad).

OLD BUSINESS:

Petition of Newtown Road LLC/Maria & Manuel Andre, Whitney Avenue (K12254) for Change of Zone from RA-8 to CG-20. MARCH SUBMISSION.

Chairman Haddad seated Mr. Eriquez to take Mr. Masi's place for this matter. He then said eligible to vote on this petition are: Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, Mr. Melillo, Mr. Eriquez, and Chairman Haddad. He asked if anyone was prepared to make a motion, so they could discuss this. Mr. Melillo said he was prepared to make a motion but he wanted to ask Attorney Marcus if he would rather they wait for a larger quorum before they vote. Mr. Melillo pointed out that since approval of this will require a super majority (6-3) vote, it would be fairer to wait for nine-member quorum to vote on it. Chairman Haddad said since there were only eight members present at the public hearing, they would have some of the other member(s) watch the video of the public hearing and review the documents, so there would be at least nine members eligible to vote on this. Attorney Marcus thanked the Commission and asked that the vote be tabled to allow more members to become eligible to vote on it. Chairman Haddad said they would consider this petition at the next regular meeting on June 22nd.

Petition of D & B Wellness to Amend Sections 5.A.5.f.(2), 5.B.3.b., and 5.B.5.f.(1) of the Zoning Regulations. (Delete Prohibition on Drive-Thru Window for Medical Marijuana Dispensary.)

Chairman Haddad seated Mr. Marchand again to take Mr. Masi's place for this matter.

Mr. Melillo made a motion to deny this petition for the following reasons:

- 1) This amendment is inconsistent with the Plan of Conservation & Development (POCD) specifically the Land Development Plan Section regarding coordinating land use decisions with transportation systems to ensure roads and highways can accommodate new development without significant declines in traffic safety or efficiency.
- 2) Approval of this would undermine the existing prohibition on drive-thru windows and could impact the compatibility of land uses and result in traffic congestion and safety impacts along arterial corridors, especially Mill Plain Road.
- 3) The amendment has the potential to have negative impact on the health, safety, & welfare of the general public, and could reduce the protections the City has long endeavored to maintain relative to restrictions on drive-through uses, particularly in the CA-80 Zone.

Mrs. Fay seconded the motion. Chairman Haddad asked if any of the Commission members had any comments. Mrs. Fay said they have committed to allowing medical marijuana to be sold in the City but the sales through a drive-thru window are an inappropriate use of the drive-thru regulations. Mr. Almeida said the scope of this petition is very narrow and he does not agree that the sale of medical marijuana via a drive-thru window will have any negative impact on the City. He said Attorney Marcus's presentation was not very compelling especially his saying that there is no difference between using a drive-thru window compared to curbside pick-up. Mr. Almeida said he does not see any reason to turn this down. Mrs. Fay said she personally has a great amount of experience with the Mill Plain Road traffic and it is every bit as bad as described. She added that the enticement of not having to get out of the car might lead patients to switch their choice of dispensary to the Danbury location, which would cause increased traffic. Mr. Almeida said the traffic is going to be there no matter what decision the Commission makes tonight. Mr. Melillo said although he has not voted in favor of any of the medical marijuana petitions, he made the motion tonight because he is trying to maintain the integrity of the drive-thru regulations. Mr. Hawley said he does not believe that the use of the drive-thru window would be detrimental to the City. Chairman Haddad thanked Mr. Tirella for making the effort to provide curbside pick-up to his customers. He then said he is taking the medical marijuana out of the equation and just looking at protecting their drive-thru regulations.

Chairman Haddad took a roll call vote and the motion to deny was passed with five ayes (from Mrs. Fay, Mrs. Hylenski, Mr. Jowdy, Mr. Marchand, and Chairman Haddad) and four nays (from Mr. Almeida, Mr. Hawley, Mr. Kelly, and Mr. Marchand).

Chairman Haddad asked if there was anything to discuss under Other Matters and there was nothing. He noted that there was nothing under New Business, Correspondence, or For Reference Only.

At 10:29 PM with no further business to discuss, Mr. Almeida made a motion to adjourn. Mrs. Hylenski seconded the motion and it was passed unanimously by voice vote with nine ayes (from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, Mr. Kelly, Mr. Melillo, Mr. Marchand, and Chairman Haddad).

Respectfully submitted,

JoAnne V. Read
Planning Assistant